



Attorney Docket No. 2001P16019WOUS

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Josef Gerl
Application Number: 10/733,911
Filing Date: 12/10/2003
Group Art Unit: 1761
Examiner: Timothy F. Simone
Title: COOKING APPLIANCE WITH AN EXTRACTOR FAN
Attorney Docket No.: 20016019WOUS

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Dear Sir:

Appellant hereby files an amended Appeal Brief in the above-identified application. The Appeal Brief was accompanied by the requisite fee set forth in 37 CFR 1.17(f) on April 23, 2007. This amended Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) dated June 11, 2007.

Should there be any further questions, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell W. Warnock". The signature is fluid and cursive, with the first name "Russell" being more prominent.

Russell W. Warnock

Registration No. 32,860

July 6, 2007



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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Josef Gerl
Application Number: 10/733, 911
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Confirmation No. 8492
Examiner: Timothy F. Simone
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P.O. Box 1450
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Dear Sir:

APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an Appeal Brief in the above-identified application. This Appeal Brief was accompanied by the requisite fee set forth in 37 CFR 1.17(f) on April 23, 2007.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeraete GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 7-12 are pending in the application and have been finally rejected. Claims 1-6 have been cancelled. The final rejection of claims 7-12 is being appealed.

(4) STATUS OF AMENDMENTS

In response to the final rejection dated November 30, 2006, a Notice of Appeal was filed by Appellant and received by the Office on February 27, 2007. An Amendment D is being filed concurrently with this appeal brief wherein the preambles of each of the claims are amended to clarify certain claim language and to address the rejection of claims 7 – 12 under 35 U.S.C. § 112, first paragraph.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Reference is herein made below to the specification and the drawings of the present application. As defined in claim 7, the present invention provides a cooking appliance having at least one heating unit 10 for heating a cooking area

11 and including at least one extractor fan 12. The appliance comprises a control unit 13 for regulating a switch-on time for the extractor fan from one of a plurality of different switch-on times depending upon a selected cooking mode and an electronic storage unit 14 coupled to the control unit and having at least one of said switch-on times stored in said electronic storage unit. Reference is made to page 5, line 28 to page 6, line 15 of the specification and Figures 2 and 3 of the drawings.

A switch-on time t of the extractor fan 12 is defined as an interval from the beginning of a cooking mode selected via the control element 22, 23, 24 to the start of the extractor fan 12 (reference is made to page 5, lines 28-31 of the specification). A switch-on time t can be controlled by a control unit 13 depending on the selected cooking mode to different switch-on time parameters t_1 , t_2 , t_3 , whereby the switch-on time parameters t_1 , t_2 , t_3 are stored in an electronic storage unit 14, and in an EEPROM (Electric Erasable Programmable Read-Only Memory) (reference is made to page 5, lines 31-35 of the specification and Figures 2 and 3 of the drawings).

For example, during a cooking mode associated with grilling, the extractor fan 12 is started with a switch-on time parameter t_1 of 3 minutes; in a cooking mode associated with baking and roasting, the extractor fan 12 is started with a switch-on time parameter t_2 of 8 minutes; and with a cooking mode associated with closed vessel cooking, the extractor fan 12 is started with a switch-on time parameter t_3 of 10 minutes (reference is made to page 6, lines 1-9 of the specification).

With reference to page 6, lines 21-31 of the specification, and as defined in claims 10 and 11, disposed inside the cooking area 11 of the present invention can be a humidity sensor 15 connected to the control unit 13. Should the humidity f inside the cooking area 11 exceed a preset humidity limit parameter f_{xLimit} before the extractor fan 12 is started, the latter is activated via the control

unit 13. This aspect allows the extractor fan 12 to be started before the expiration of the respective time interval associated with a given cooking mode at which the extractor fan 12 would otherwise have been switched on.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 7-12 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?
- b. Whether claims 7-12 are unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.?

(7) ARGUMENT

Claims 7-12 may be considered as a single group of claims with respect to the rejection thereof as failing to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

Claims 7-9 and 12 may be considered as a single group of claims with respect to the rejection thereof as unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.

Claim 10 may be considered as a single claim with respect to the rejection thereof as unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.

Claim 11 may be considered as a single claim with respect to the rejection thereof as unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.

EP 0 545 012 B1 to Wurm ("Wurm '012") is directed to a circuit

arrangement for cooling-air control in the case of a domestic apparatus, especially for a microwave-combination apparatus. A fan motor (1) is connected at one pole to the neutral conductor and is connected on the other end to a resistor (2) which can be bridged by a switch (3). The resistor (2) is connected directly to the AC voltage source or in series with a temperature sensor (5), depending on the position of an operating-mode changeover switch (4).

Wurm '012 provides a circuit such that the cooling exhaust is controllable (via a predetermined number of revolutions of the fan) in accordance with the possible modes of operation of the appliance. A temperature sensor (5) can be used, and which is separately heated, to close the contact (not numbered but illustrated in the sole Figure) due to the heating and to activate the circuit.

EP 0 950 861 A1 to Roge et al. ("Roge '861") is directed to an oven having independently controlled top and side/base heating resistors (4,5) which are operated by contacts (8,9) and also bottom and tangential ventilators (6,7) operated by contacts (10,11). Overall control of the oven is exercised by a programming unit (12) which uses successive periods to commence cooking with minimal humidity evacuation, to operate at fixed temperature, to allow temperature to fall and then to maintain a relatively low temperature.

As defined in Roge '861, the programming unit (12) is designed to actuate the various switches or contacts (8,9,10,11) according to a sequence relating to various cooking modes in order to activate heating resistors (4,5) and/or ventilators (6,7). For instance, in a first phase of pre-heating, resistors (4,5) may be powered successively with ventilator (6) activated and minimal moisture evacuated with second ventilator (7) on low. In a second phase of actual baking, resistors (4,5) may be powered to maintain a constant temperature with or without moisture variation by monitoring the speed of second ventilator (7). In a third phase of cool-down, resistors (4,5) have their power isolated and ventilators (6,7) may be run on low for maximum moisture. In a final phase of temperature

maintenance, resistors (4,5) may be run on low and ventilators (6,7) may be run on low for maximum moisture.

- a. Whether claims 7-12 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?

The Examiner has indicated that claims 7-12 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph. The Examiner indicates that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The Final Office Action asserts that in claim 7, for example, there is no support in the original disclosure for "different switch-on times", etc. as recited.

The present invention is based on a cooking appliance having at least one heating unit, by means of which a cooking area can be heated, and with at least one extractor fan, by which at least one parameter, depending on a selected cooking mode, can be regulated via a control unit to different parameter values (reference is made to page 1, line 30 to page 2, line 3 of the specification). Switch-on time, defined as an interval between the beginning of a cooking operation and the start of the extractor fan, is defined as a parameter value (along with switch-on duration, run-on time, fan speed and the like) (reference is made to page 2, lines 12-15 of the specification). While the Final Office Action asserts that "there is no support in the original disclosure for 'different switch-on times', etc. as recited", Appellant submits that the elements as recited are adequately supported in the original specification and drawings. For example, with reference to page 5, lines 28-35 of the specification, a switch-on time t of the extractor fan 12 is defined as being "controlled by a control unit 13 depending on the selected cooking mode to *different switch-on time parameters t_1 , t_2 , t_3* " (*emphasis added*).

Thus, Appellant submits that the subject matter recited in the finally rejected claims 7-12 was described in the specification so as to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

b. Whether claims 7-12 are unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.?

The Examiner has indicated that claims 7-12 are unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm ("Wurm '012") or EP 0 950 861 A1 to Roge et al. ("Roge '861"). The Final Office Action asserts that Wurm '012 or Roge '861 disclose the claimed invention except for the specific automatic control unit and automatic electronic storage unit as claimed. It would have been obvious, Final Office Action asserts, to one having ordinary skill in the art at the time the invention was made to have provided a specific automatic control unit and automatic electronic storage unit, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

Characteristic of the claims under appeal is the recitation of an electronic storage unit coupled to a control unit and having at least one of different switch-on time parameters stored therein. The control unit of the cooking appliance regulates a switch-on time for the extractor fan from one of the stored plurality of different switch-on times depending upon a selected cooking mode.

Wurm '012 is merely directed to a circuit arrangement wherein a fan motor (1) is connected at one pole to the neutral conductor and is connected on the other end to a resistor (2) which can be bridged by a switch (3). The resistor (2) is connected directly to the AC voltage source or in series with a temperature sensor (5), depending on the position of an operating-mode changeover switch (4). There is no teaching or disclosure in Wurm '012 of an electronic storage unit

coupled to a control unit and having at least one of different switch-on time parameters stored therein, nor would it be considered as involving only routine skill in the art since the function of the electronic storage unit (storing switch-on times) is not mere replacement of a manual function but integrally works with the control unit for regulating a switch-on time of the extractor fan.

Roge '861 is merely directed to an oven having independently controlled top and side/base heating resistors (4,5) which are operated by contacts (8,9) and also bottom and tangential ventilators (6,7) operated by contacts (10,11). A programming unit (12) controls the oven by using successive periods to commence cooking with minimal humidity evacuation, to operate at fixed temperature, to allow temperature to fall and then to maintain a relatively low temperature. There is no teaching or disclosure in Roge '861 of an electronic storage unit coupled to a control unit and having at least one of different switch-on time parameters stored therein, nor would it be considered as involving only routine skill in the art since the function of the electronic storage unit (storing switch-on times) is not mere replacement of a manual function but integrally works with the control unit for regulating a switch-on time of the extractor fan.

c. Whether claim 10 is unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.?

There is also no teaching or disclosure in Wurm '012 or Roge '861 of a cooking appliance including the elements as presently recited in claim 10 including a humidity sensor coupled to the control unit, the extractor fan being controlled by a predetermined value detected by the humidity sensor. To wit, the only discussion in Wurm '012 or Roge '861 of any type of external sensor is that of a temperature sensor 5 in Wurm '012, which is separately heated and closes the contact due to this heating after a certain amount of time. Roge '861 discusses allowing maximum moisture content in the third and fourth phases (cool-down and temperature maintenance, respectively) but this is controlled

merely by a pre-set setting of ventilator speed based on the cooking mode. There is no teaching or disclosure of an extractor fan being controlled by a predetermined value detected by a humidity sensor (as in the current claim 10). The variable function of controlling the extractor fan based on actual humidity level in the cooking cavity (which may vary widely based on the type of food being cooked), as defined in claim 10 of the present application, is not taught or suggested by the prior art.

d. Whether claim 11 is unpatentable under 35 U.S.C. § 103(a) over EP 0 545 012 B1 to Wurm or EP 0 950 861 A1 to Roge et al.?

There is no teaching or disclosure in Wurm '012 or Roge '861 of a cooking appliance including an extractor fan being controlled by a predetermined value detected by a humidity sensor (as in the current claim 10 from which claim 11 depends) and including, as well, the elements as presently recited in claim 11 of a humidity sensor being operable to sense humidity levels relative to a cooking area, and wherein the control unit is operatively connected to the humidity sensor such that the control unit is operable, upon the sensing by the humidity sensor of a humidity level exceeding a predetermined humidity level, to switch on the extractor fan at a time before the time of expiration of the respective time interval associated with the given cooking mode at which the extractor fan would have otherwise been switched on.

To wit, the only discussion in Wurm '012 or Roge '861 of any type of external sensor is that of a temperature sensor 5 in Wurm '012, which is separately heated and closes the contact due to this heating after a certain amount of time. Roge '861 discusses allowing maximum moisture content in the third and fourth phases (cool-down and temperature maintenance, respectively) but this is controlled merely by a pre-set setting of ventilator speed based on the cooking mode. There is no teaching or disclosure of a humidity sensor being operable to sense humidity levels and a control unit being operable, upon the

sensing by the humidity sensor of a humidity level exceeding a predetermined humidity level, to switch on the extractor fan before the time the fan would have otherwise been switched on (as in the current claim 11). The variable function of controlling the extractor fan based on actual humidity level in the cooking cavity (which may vary widely based on the type of food being cooked), as defined in claim 11 of the present application, is not taught or suggested by the prior art.

(8) CONCLUSION

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of claims 7-12 over the cited art, and hold that the Appellant's claims be allowable over such art.

Respectfully submitted



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July 6, 2007

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CLAIMS APPENDIX

1 – 6 (Cancelled)

7. A cooking appliance having at least one heating unit for heating a cooking area and including at least one extractor fan, comprising:

a control unit for regulating a switch-on time for said extractor fan from one of a plurality of different switch-on times depending upon a selected cooking mode; and

an electronic storage unit coupled to said control unit and having at least one of said switch-on times stored in said electronic storage unit.

8. The cooking appliance according to claim 7, including said control unit formed at least partly monobloc with a second control unit to control said heating unit.

9. The cooking appliance according to claim 7, including said electronic storage unit formed at least partly monobloc with a second storage unit in which said at least one cooking mode value is stored.

10. The cooking appliance according to claim 7, including a humidity sensor coupled to said control unit, said extractor fan being controlled by a predetermined value detected by a humidity sensor.

11. The cooking appliance according to claim 10, wherein said storage unit stores a plurality of switch-on time parameters with each switch-on time parameter being associated with a given cooking mode and each switch-on time parameter being a respective time interval associated with a respective cooking mode, the switching on of said extractor fan being effected upon the expiration of the respective time interval associated with a respective given cooking mode selected by a user, said humidity sensor is operable to sense humidity levels

relative to the cooking area, and said control unit is operatively connected to said humidity sensor and, in connection with each given cooking mode, said control unit is operable, upon the sensing by said humidity sensor of a humidity level exceeding a predetermined humidity level, to switch on said extractor fan at a time before the time of expiration of the respective time interval associated with said given cooking mode at which said extractor fan would have otherwise been switched on.

12. The cooking appliance according to claim 7, including said extractor fan is formed monobloc with a cooling fan.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None